

components independent of command protocols recognised by the connected components.” As noted at page 6 of the specification:

It will be appreciated that at least some if not all of the components connected to the data bus 10 may emanate from alternative manufacturers, or even when from the same manufacturer may be of different generations or otherwise may be incompatible from a control point of view. This connected component may require command protocols particular to that component in order to perform a productive function such as “print” or “wrap.”

The invention of claim 1 permits a common computer protocol to be used by the control means, and the respective connecting means then translates the commands to the command protocol actually used by the connected component. As described at page 7 of the specification:

Each connecting means may be a serial connection which includes means to translate the data bus commands addressed to the associated connected component into a command protocol appropriate to control the individual connected component to operate to perform productive functions in accordance with the control algorithm.

II. The Rejection

Independent claim 1 stands rejected under 35 USC 102(e) on the basis of Komiya U.S. Patent No. 6,155,025. It was noted in the office action with respect to the rejection of claim 1:

A controller (66) sends signals to each of the elements of the system via a data bus. (See KOMIYA ET AL columns 4-6 and 9-12 and figures 1, 2, and 19.)

① The passages of Komiya at columns 4-6 and 9-12 and the figures 1, 2 and 19 referenced in the office action merely describe how a controller controls various mechanisms and patterns and how computer 66 controls various process controllers. Komiya nowhere discloses or suggests a “respective connecting means” for each of a first, second and third marking means and for a means to collect where each respective connecting means includes a “means to translate data bus commands appropriate to that component into a command-protocol which is read by the connected component which responds by performing a productive function, whereby the control means is able to control each of the connected components independent of command protocols recognised by the connected components.”

In the office action it is asserted that the missing "means to translate" claim limitations can be considered to be present in Komiya under principles of inherency.

Note that KOMIYA ET AL. does not specifically refer to the data bus that transmits signals and translations of commands from the controller to the peripheral units, however, these limitations are inherent in the invention of KOMIYA ET AL: the connecting of a elements of a machine with a controller, such as connecting a printer or floppy drive to a computers CPU or connecting remote sensors and machine control circuits to a PLC, is inherent in structure and is necessary when any components are connected via a data bus to a controller. The same principle applied to a means for translating data bus commands: if this were not so, the above examples of a computer would not be able to communicate with or recognize the printer or floppy drive and the example of a machine with remote sensors and control circuits would not be able to communicate or receive instructions from the PLC.

III. Argument

A. Inherency Requires that Missing Feature must Necessarily Be Present from Disclosure in Prior Art Reference

The MPEP 2112 provides (at 2100-52):

EXAMINER MUST PROVIDE RATIONALE OR EVIDENCE TENDING TO SHOW INHERENCY

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art).... ***

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

B. Means to Translate Probably Would not Be Present in Komiya System

In order to address what is disclosed in Komiya, applicant first considers the operation of components in a simpler packaging line, and then consider the more complex packaging line described in Komiya.

Let us start with the example of a computer controlling a packaging line which merely consists of a printer and a palletiser. If the printer and the palletiser are supplied by the same equipment manufacturer, the chances are that they will be controllable according to a common protocol. Thus, a computer controller can be provided with the manufacturer's drivers and computer controller can make the printer print, and the palletizer palletise.

In a more complex manufacturing set up though, it may be necessary to replace the printer, for example, because the printer has failed. If one replaces the printer with an identical model, or perhaps a similar model from the same manufacturer, possibly no change in the computer controller will be required. However, it is more likely that the printer would be replaced with a printer that requires different drivers, either because it emanates from a different manufacturer, or, if from the same manufacturer as the defunct printer, because the new printer is one which requires different drivers to make it operate. In each case, the computer controller would need to be reprogrammed, for example to select a different driver for the new printer. The same problem arises with every item of equipment in the manufacturing environment and particular in the packaging line, the subject of the present application.

One can only presume in Komiya that is envisaged that every item of equipment that is replaced would be replaced by an item which operates according to the same protocol or else, that the controller is reprogrammed to cope with such a new item of equipment. This is precisely the prior-art problem which the present-invention-is-intended to overcome.

20 In the present invention, because each item of equipment includes a "respective connecting means" each of which includes "means to translate" database commands appropriate to that component into a command protocol which is read by the connected component, the computer controller would only ever have to instruct the item of equipment to operate (e.g., "print") and this command would be translated by the connecting means to a command appropriate to the particular item of equipment, i.e., no re-programming of the computer controller is required merely because a replacement printer, or other item of equipment, has been inserted into the packaging-system.

Thus, contrary to the statement in the office action that a "respective connecting means" each of which includes "means to translate" would be present in Komiya, from what is described

in Komiya, one would assume that new drivers would need to be installed in the computer controller for each new component.

C. Means to Translate not Necessarily Present in Komiya, so Rejection Based on Inherency Is not Proper

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As we have said previously, the Komiya specification is silent as to protocols and one has to assume the Komiya either relies on equipment being replaced by equipment which operates according to the same protocol as the replaced equipment, or relies on reprogramming of the computer controller. It is not possible from reading Komiya to reach any other conclusion.

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In any event, arguendo only and contrary to law and fact, if we were to assume that from what is said, or not said, in Komiya, that it might be possible to include a "respective connecting means" each of which includes "means to translate," this would not be necessary, and therefore, it is improper to rely on "inherency" to make up the missing features in the prior art.

Conclusion

It is respectfully submitted that the rejection of claim 1 on Komiya should be withdrawn, and that claim 1 should be allowed. The remaining claims depend on claim 1 and are allowable with it.

Enclosed is a \$110 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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